SUBJECT INDEX

Page

Jurisdiction 2

Statement of Case 3

Actions Below 5

Questions Presented 6

Reasons Why The Writ Should Be Granted 7

Prayer 11

BRIEF

Summary of Case 13

Argument On Point I 15

That as a citizen of the United States even though incarcerated in in a penitentiary, he retains property rights that his keepers are bound to respect 15

Argument on Point II:

That his right to own property is protected from official encroachment and conspiracy by Sections 43 and 47 of Title 8, and that the function of courts is to safeguard the property rights of all citizens from official encroachment. 16

Argument on Point III:

That the Ninth Circuit Court was mistaken in its presumption that Congress expressed an intention to deprive the courts of power to review administrative acts of minions of the Federal Bureau of Prisons by mere silence upon the question of review ON the creative statute 27

Argument on Point IV:

That a single District Judge does not have authority to dismiss a civil action challenging the constitutionality of any order of an executive agency of the United States 31

Argument on Point V:

That even an inmate of Alcatraz has a right to prosecute a civil action in propria persona in event of a showing that 36

Appendix A:

History Behind Litigation 41

Affidavit of Petitioner 60

Subject Index

Page

Appendix B:

Memorandum Opinion of District Judge Louis E. Goodman in Case No. 23817.....61

Order Modifying Original Opinion.....65

Appendix C:

Order of District Judge Dal M. Lemmon dismissing the petition with prejudice and with leave to amend in Case No. 28295-H.....66

Appendix D:

Letter of Attorney William Fallon of date of February 3, 1949.....69

Letter of Attorney Jaques Leslie of date of February 25, 1949.....70

Letter of Attorney Jacques Leslie of date of July 5, 1949.....72

Appendix E.

Leter of Attorney Nathan Cohn of date of March 2, 1951.....74

Certification of Documents.....76

Index of Authorities Cited

Acret v. Harwood, 41 F Supp. 492 (S.D.Cal, 1941.....19

American School of Magnetic Healing v. McAnnulty 187 U. S. 94, 110 (1902).....8, 19, 22

Bell v. Hood, 327 U. S. 678 (1945).....21

Bradley v. Richmond, 227 U. S. 477, 483 (1912).....19

Byers v. Banks, 139 Pac. 948.....16

City of Mitchell v. Dakota Telephone Co., 246 U.S. 396, 407 (1917)..21

City Ry Co. v. Citizens R. R. Co. 166 U. S. 557 (1896).....21

Coffin v. Richard, 143 F (2d) 443.....9, 16

Crowell v. Benson, 285 U. S. 22.....28

Cunningham v. Macon and Brunswick R.R. Co. 109 U. S. 446, 452..28

De Cloux v. Johnston, 70 F Supp 718.....23

Estep v. U. S. 327, U. S. 144 (1946).....20, 29, 30, 32

Ex Parte I.a Prads, 269, U.S. 444.....28

Ex Parte, Young, 209 U. S. 123.....28

Federal Radio Comm. v. Nelson Bros Co. 289, U.S. (1932).....21

Page

Flemming v. Moberly Milk Products Co. 160 F (2d) 259, 265, App D. C. 1947) 18, 19
Cert. dismissed 331, U. S. 786 18
Goldman v. American Dealers Service, 135 F (2d) 398 29
Haynes v. Paterson, 125 Va. 730 16
Hays v. Seattle, 251 U. S. 233 (1919) 21
Hine v. Welch, 23 F (2d) 259 19
Hopkins v. Clemson Argus Agricultural College 221 U.S. 636, 643 ..28
In re Ayres, 123 U. S. 443, 500 28
In re Birdsong, 39 F 599 (1889) 18
In re Medley, 134, U. S. 160 37
International Ry. Co. v. Davison, 257, U. S. 506, 514 (1921) 8, 19, 32
Kelly v. Dowd, 140 F (2d) 81, CCA 7th 1944 ..... 16, 18, 22, 28
Marbury v. Madison 1 Cranch 137 (1803) 18
Marshall v. Rowls, 58 F. Supp 462 (N. D. Cal. 1944) 19
Morrison v. California 5th S Ct., 281 10
Noble v. Union River Logging R. R. Co. 20
147 U. S. 165, 171, 172, 1892 22
Numar v. Miller, 165 F (2d) 986 23
Osborn v. Bank of United States, 9 Wheat 839, 843, 868 (U. S.) 18, 22, 24
Pennoyer v. McConaughy, 140 U. S. (1890) 21
Philadelphia Co. v. Stimson, 223 U. S. 605 620 (1911) 20, 21, 22, 28
Platok v. Aderhold, 73 F (2d) 173, 175 ..... 17, 28
Poindexter v. Green How, 114, U. S. 270, 282 290 330 25
Presburg v. Hull, 34 Mo. 29 16
Price v. Johnston, 159 F (2d) 234 ..... 22, 23, 27, 36
Price v. Johnston, 334 U. S. 266 ..... 3, 5, 23, 27, 36
Sanders v. Johnston, 159 F (2d) 74 (CCA 9) 17, 23, 24
Sanders v. Swope, 176 F (2d) 311 ..... 23, 25
Sarshik v. Sanford, 142 F (2d) 812 27
Shepherd v. Hunter, 163 F (2d) 872, 874 ..... 23, 28
Skinner v. State of Oklahoma, 62 S Ct 1110 10
Snow v. Roche, 143 F (2d) 716 ..... 23, 25, 28
Social Security Borad v. Hieratko, 327 U.S. 358, 369 ..... 8, 18
State of Louisiana ex rel Francis v. Resweber, 67 S ct 374 10
St. Joseph Stockyard Co. v. United States 298, U. S. 38, 52 1935 19

Page

Switchman's Union of North America v. National Mediation Board
320 U. S. 297....28
Taylor v. Georgia, 62 S Ct 415....28
Taylor v. U. S., 179 (2d) 640....28
United States v. Lee, 106 U. S. 196, 220....28
United States v. Ring Construction Co., 96 F Supp. 762....28

STATUTES

R. S. Section 5537....42
R. S. Section 5538....42
R. S. Section 5539....42
R. S. Section 5540....42
R. S. Section 5541....42
R. S. Section 5542....42
R. S. Section 5543....42
R. S. Section 5544....42
R. S. Section 5545....42
R. S. Section 5546....42
R. S. Section 5547....47
Title 8, U. S. C. Section 41....15
Title 8, U. S. C. Section 42....16
Title 8, U. S. C. Section 43....2, 16, 17, 27
Title 8, U. S. C. Section 44....2, 6, 27
Title 17, U. S. C. Section 1....4, 33
Title 17, U. S. C. Section 9....34
Title 17, U. S. C. Section 10....34
Title 17, U. S. C. Section 11....34
Title 17, U. S. C. Section 12....34
Title 17, U. S. C. Section 13....34
Title 17, U. S. C. Section 14....34
Title 17, U. S. C. Section 15....34
Title 17, U. S. C. Section 16....34
Title 17, U. S. C. Section 17....33
Title 17, U. S. C. Section 18....20
Title 17, U. S. C. Section 25....34
Title 17, U. S. C. Section 28....34
Title 17, U. S. C. Section 34....33

PAGE

Title 17, U. S. C. Section 41 33
Title 18, U. S. C. Section 4001 7
Title 18, U. S. C. Section 4041 7
Title 18, U. S. C. Section 4042 7
Title 28, U. S. C. Section 1254(1) 3
Title 28, U. S. C. Section 1291 ..... 3, 34
Title 28, U. S. C. Section 1343 2
Title 28, U. S. C. Section 1442 2
Title 28, U. S. C. Section 1651 3
Title 28, U. S. C. Section 2282 ..... 2, 31, 32
Title 28, U. S. C. Section 2284 ..... 2, 31, 32

STATUTES AT LARGE

Act of May 14, 1930 C. 256, 46 Stat. 273 7

THE CONSTITUTION

Amendment 5 ..... 10, 15, 27
Amendment 14 10

OTHER AUTHORITIES

18 C. J. S. 105, Property 16
The Constitution by Andrews 18
Federal Bureau of Prisons Manual Bulletin No. 96 33

IN THE

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1951

No.

ROBERT STROUD,

Petitioner,

vs.

E. B. SWOPE, Warden United States Penitentiary, Alcatraz, California,

Respondent.

PETITION FOR WRIT OF CERTIORARI

to the United States Circuit of Appeals

for the Ninth Circuit Court

and

SUPPORTING BRIEF

Submitted by

Robert Stroud, No. 594,
Alcatraz, California,
In Propria Persona.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Jurisdiction

I

This case involved a petition for an injunction filed in the United States Court for the Northern District of California, Southern Division, on March 20, 1950 (R. 48) by an inmate of Alcatraz, against the Warden of that institution in which the inmate attempts to restrain the Warden from interfering with his property rights by unreasonable interference with his correspondence with his business agent, and seeks other redress. (R. 2, 17.)

II

The petition filed in the District Court alleges that the petitioner has been and is being deliberately deprived of his property rights by said Warden acting under color of a statute of the United States (R. 2, 3, 16); That the actions complained of are the result of a conspiracy to deprive petitioner of his property rights without due process of law (R. 2, 3, 14), and that as a part of said conspiracy there has been issued an unconstitutional order by an executive agency of the United States which has served as a pretext for the actions complained of (R. 4, 15).

Under these circumstances the District Court had jurisdiction of the original proceeding pursuant to Sections 43 and 47 of Title 8, U. S. C., and Sections 1343, 1442, 2282, and 2284 of Title 28, U. S. C. (R. 4).

III

Attached to the original petition filed in the District Court was a motion praying for the production of petitioner in Court for the purpose of presenting this action in propria persona which the District Court had jurisdiction to grant pursuant to Section 1651 of Title 28, U. S. C. and this Court's opinion in *Price v. Johnston,* 334 U. S. 226–291 (R. 18).

IV

The United States Court of Appeals for the Ninth Circuit had jurisdiction to review the orders of the District Court (R-48) pursuant to Section 1291 of Title 28, U. S. C.

V

This court has jurisdiction to review the action of the United States Courts of Appeals upon Writ of Certiorari, pursuant to Section 1254 (1) of Title 28, U. S. C.

Statement of Case

I

This case involves a petition for an injunction and other relief brought by an inmate of Alcatraz, against the Warden of that institution (R. 2) and seeks to restrain said Warden from unlawful and unreasonable interference with petitioner's lawful and reasonable correspondence with his business agent, Mr. L. G. Marcus, and other encroachments upon his property rights.

II

The petition alleges that the petitioner has been damaged to the extent of many thousands of dollars (R. 9,

10, 15) by the actions of the respondent and seeks judgment for the amount of his actual and provable damage. (R. 16, 17.)

III

The petitioner alleges that the acts and omissions complained of are the result of a conspiracy against him that has existed in the Federal Bureau of Prisons since October 4, 1931 (R. 15), and that the purposes of said conspiracy are to deliberately so damage him in his property rights that he may never, by any lawful means, whatsoever, obtain funds that might be used to organize a successful campaign for executive clemency (R. 15); and that said conspiracy involved the issuing of an unconstitutional order by an executive agency which since 1931 has operated to effectively deprive the petitioner of his property without due process of law.

NOTE: For details of the events leading up to the formation of the alleged conspiracy see Appendix A. All statements contained therein are provable by official documents or direct testimony.

IV

Attached to the petition are two exhibits, a letter (R. 29-48), to an attorney who double-crossed the petitioner in an attempt to rob him in the interest of another client (Appendix A) and a memorandum (R. 22-29) for petitioner's business agent. The interference with these communications inflicted damages upon the petitioner, the full extent of which was not known to him at the time of drawing his petition, but which actually damaged him to an extent of more than seven thousand dollars. These acts of the respondent are cited as overt acts in the alleged conspiracy (R. 15) and are merely incidental to the funda-

mental issue of the petitioner's complaint, which is the conspiracy to deprive him of his property (R. 15, Appendix A).

V

The present action is the third of several attempts of the petitioner to secure a determination of his rights by the Courts. (Appendix A, B C and D) but in no case has he been successful in obtaining a hearing on the merits of his complaints.

Actions Below

On March 30, 1950 (R. 48), the petitioner filed his petition for an injunction and other relief in the District Court for the Northern District of California; The Case was assigned District Judge Louis R. Goodman, who in one sentence order filed on March 21, 1950, arbitrarily dismissed the action. (R 48.)

This order was duly appealed to the Ninth Circuit Court of Appeals and the petitioner filed a motion in the Court of Appeals for his personal appearance for the purpose of arguing his own case under authority of this Court's opinion in *Price v. Johnston,* 334, U. S. 266.

The motion was denied and Mr. Nathan Cohn, Esq. of San Francisco was appointed by the court to argue the appeal for the petitioner in that court.

The case came on for hearing on March 2, 1951, and was argued by Nathan Cohn for the petitioner and Joseph Karesh, Assistant United States Attorney for the respondent. (R. 57.)

The action of the District Court was affirmed in an opinion filed on March 9, 1951 (R. 58-61), and it is from that opinion that the petitioner seeks certiorari.

QUESTIONS PRESENTED

I

Does a citizen of the United States, even though incarcerated in a penitentiary, retain property rights that his keepers are legally bound to respect?

II

Are his rights to own property protected from official encroachment and conspiracy by sections 43 and 47 of Title 8?

III

If the answers to questions I and II are *Yes,* are the courts of the United States vested with authority to protect the property rights of Federal Prisoners?

IV

Does a single District Judge have authority to dismiss a petition for an injunction seeking to restrain an employee of the United States from enforcing an order of an executive agency of the United States on the grounds that said order is repugnant to the Constitution of the United States?

V

Does an inmate of Alcatraz have a right to prosecute a civil action in *propria persona* in the event of a showing?

One, that he is capable of putting up a sound legal argument;

Two, that the case is of such a nature that it would be impossible for one unfamiliar with the facts intelligently to present it to the court;

Three, that the circumstances of imprisonment are such that it is impossible for the prisoner to give an attorney a complete grasp of the situation complained of, and,
Four, that the prisoner can be produced in court without undue inconvenience or any possibility of escape.

Reasons Why the Opinion of The Circuit Court Should be Reviewed by This Court

I

This Court has never defined the property rights of persons convicted and incarcerated for crimes against the United States, and the opinions of the Circuit Courts are fragmentary and far from conclusive.

II

The Federal Bureau of Prisons has set itself up as the sole arbitor of the rights of inmates of Federal institutions, contrary to the Constitution and Laws of the United States.

III

The opinion of the court below contains the following words:

> "Congress has carefully refrained from imposing upon the court the authority to interfere with matters of prison discipline affecting activities of the character revealed by the record in this case." (R. 61.)

This construction of an Administrative Statute (Act of May 14, 1930, c. 256, 46 Stat. 273, from which are derived sections 4001, 4041, and 4042 of Title 18 U. S. C.), attempts to enlarge the statute in question in a manner

never contemplated by the Congress (Appendix A, para. 17) violative of the Constitution and Laws of the United States, and in direct conflict with the applicable opinions of this Court and the usages and practices of Law.

IV

The above mentioned construction attempts to, and in effect does, confer upon the Federal Bureau of Prisons complete and absolute power over the life and property of every person committed to the custody of the Attorney General. A prisoner may be beaten, hung up by the thumbs, starved to death, or deliberately murdered by other means, all contrary to the Constitution and Laws of the United States, or have his property arbitrarily seized and converted to public use or destroyed without any hope of relief or redress notwithstanding the face that this court has said:

> "An administrative agency may not finally decide the limits of its statutory power. That is a judicial function. *Social Security Board* v. *Hieratko,* 327 U. S. 358, 369."

The same principles applies to administrative officials, *International Ry. Co.* v. *Davidson,* 257 U. S. 506, 514.

> "Otherwise the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer whose action is unauthorized by any law, and is in violation of the rights of the individual." *American School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94, 110.

NOTE: Lest this court assume that the illustrations cited above are far-fetched and absurd, the petitioner wishes to state that they or their

equivalent are common occurences in Federal Prisons of today and that he has repeatedly witnessed them equivalent with his own eyes and has, on some occasions, corrected them by his own ingenuity. Six times in the last ten years he has suffered serious deficiency illnesses, several of which came close to costing him his life. He has seen a man strapped down for one week, given by force two ounces of paradehyde on one ounce of orange juice three times per day with no other fluid until he was dead. This was for the offense of refusing to submit to an operation that he thought unnecessary and experimental. He has seen a man strapped down and forcibly injected with 37½ grains of sodium amitol at a single dose, 60 grains within a single twenty-four period, half of that amount intravenously and the other half intramuscularly. This when he was suffering from polineuritis and arthritis due to avitimosis for the offenses of asking for medical attention and being personally disliked by a drug-addict stoolpigeon who has since been exposed. He has himself enjoyed the rather unique and interesting experience of being strapped down with his hands at his sides within twenty-four hours of passing the crisis in lobar pneumonia, at a time when he could not possibly get enough air into his lungs in that position to keep him alive, and then after he had become cyanotic had what his would-be murderer htought would be enough pitocarpine to collapse his lungs injected into his arm. This was done because he had received a letter from an assistant United States Attorney saying that he would be called before the next session of the grand jury. He is alive to tell about it only because he is blessed with powerful adrenal glands and was able to out-think his would-be executioner. The details of all these cases are known to James V. Bennett and to the F.B.I., yet the persons directly responsible are still in Government employ.

No! This Court should not delude itself that such things occur only in Russia and Germany. Human nature is the same, everywhere, and the virus of unrestrained autocratic power always produces in the hearts of those who possess it a desire to destroy those who have the courage to challenge its abuses.

The construction of the Statute in question by the Ninth Circuit is in direct conflict with the construction of this same statute by the Sixth Circuit in *Coffin* v. *Reichard,* 143 F. 2d 443, wherein the court said:

> "A prisoner retains all the right of the ordinary citizen excepting those expressly or by necessary implication taken from him by law. While the law takes his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other

prisoners, it does not deny his right to personal security against unlawful invasions.

"Where a man possesses a substantial right, the court will be diligent in finding a way to protect it."

The Fifth Amendment to our Constitution defines the right to *property* in the same clause with *Life* and *Liberty*, as a fundamental right which may not be taken without *due process of law*, and it is axiomatic that *due process of law* comprehends the right to be heard before an impartial court of competent jurisdiction.

VI

This Court has on many occasions defined the rights of State Prisoners and the legal limitations of State Wardens in the lights of the 5th and 14th amendments.

State of Louisiana Ex Rel Francis V. Resweber, 67 S Ct. 374.

Skinner v. *State of Oklahoma*, 62 S Ct. 1110.

Morrison v. *California*, 54 S Ct. 281.

Taylor v. *Georgia*, 62 S Ct. 415.

but it has never defined the rights of Federal prisoners in the light of the Federal Prison Bureau Statute, supra, and this failure has during the last twenty-one years permitted the growth of many serious abuses. (See note under paragraph IV, *supra*, and Appendix A.)

VII

The Court below bases its unusual construction, not upon any Statute of the United States or any opinion of this Court, for indeed there are none that would support

it, but upon the amazing proposition that it would require the correction of existing abuses, the Court said:

> "Aside from the purely legal aspects of this case very practical considerations militate against granting to appellant the relief for which he prays for to do so would open the door to a flood of applications from federal prisoners which would seriously hamper the administration of our prison system." (R. 61.)

PRAYER

Therefore, this court should issue a writ of certiorari and review the whole records and determine the rights of the parties so that prisoners and prison officials as well as the lower courts and the bar in general may have a clear guide to rights of prison inmates and the legal limitations of agents of the Federal Bureau of Prisons, and so doth petitioner forever pray.

Respectfully submitted by

ROBERT STROUD, No. 594,
Alcatraz, California,

In Propria Persona.